

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOLYNN DURAN,

Plaintiff,

v.

RYAN LEPORE, et al.,

Defendants.

No. 1:20-cv-01693-NONE-SAB

SUA SPONTE ORDER REMANDING
ACTION TO STATE COURT

(Doc. No. 1)

The undersigned revokes any actual or anticipated referral to a magistrate judge for the purposes of findings and recommendations in this case.

On November 30, 2020, defendant¹ Jolynn Duran filed a pro se Notice of Removal with this court, seeking to remove an action from the Merced County Superior Court for the third time. (Doc. No. 1; *see also* Nos. 1:20-cv-01495-AWI-EPG, 1:20-cv-01562-NONE-EPG.) For the following reasons, the court *sua sponte* REMANDS this case to the Merced County Superior Court.

Under 28 U.S.C. § 1441(a), a defendant may remove an action to federal court if the district court has original jurisdiction. *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042 (9th

¹ Though Jolynn Duran has named herself as plaintiff, that is incorrect. In seeking to remove a state court action in which she is named as defendant, Duran remains the named defendant in federal court. The court will refer to Duran as “defendant,” notwithstanding the current captioning of the case.

1 Cir. 2009). If at any time before final judgment it appears that the district court lacks subject
 2 matter jurisdiction, the case shall be remanded. 28 U.S.C. § 1447(c). Federal courts are courts of
 3 limited jurisdiction and can adjudicate only those cases authorized by the United States
 4 Constitution and Congress. Generally, those cases involve diversity of citizenship, a federal
 5 question, or where the United States is a party. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S.
 6 375 (1994); *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for S.*
 7 *California*, 463 U.S. 1, 8 (1983); 28 U.S.C. § 1442. Lack of subject matter jurisdiction is never
 8 waived and may be raised by the court *sua sponte*. Fed. R. Civ. P. 12(h)(3); *Snell v. Cleveland,*
 9 *Inc.*, 316 F.3d 822, 826 (9th Cir. 2002).

10 In determining the presence or absence of federal question jurisdiction in removal cases,
 11 the “well-pleaded complaint rule” applies, “which provides that federal jurisdiction exists only
 12 when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
 13 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). The removal statute is strictly construed
 14 in favor of remand and against removal. *Harris v. Bankers Life and Cas. Co.*, 425 F.3d 689, 698
 15 (9th Cir. 2005). Among other things, this means that the defendant always has the burden of
 16 establishing that removal is proper. *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 838
 17 (9th Cir. 2004). Federal jurisdiction must be rejected if there is any doubt as to the right of
 18 removal in the first instance. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

19 Here, defendant is unable to establish federal question jurisdiction because the complaint
 20 filed in the state court contains a single cause of action for unlawful detainer based on California
 21 Code of Civil Procedure § 1161a. Unlawful detainer actions are strictly within the province of
 22 the state courts. *See PNC Bank Nat’l Ass’n v. Ahluwalia*, No. C 15-01264 WHA, 2015 WL
 23 3866892, at *4 (N.D. Cal. June 22, 2015) (collecting cases). Therefore, plaintiffs’ complaint
 24 avoids federal question jurisdiction. A defendant cannot create federal subject matter jurisdiction
 25 by adding claims or defenses to a notice of removal. *Vaden v. Discover Bank*, 556 U.S. 49, 50
 26 (2009) (federal question jurisdiction cannot “rest upon an actual or anticipated counterclaim”);
 27 *Valles v. Ivy Hill Corp.*, 410 F.3d 1071, 1075 (9th Cir. 2005) (“A federal law defense to a state-

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1 law claim does not confer jurisdiction on a federal court, even if the defense is that of federal
2 preemption and is anticipated in the plaintiff's complaint.”).

3 The next possible basis for this court’s jurisdiction is diversity. District courts have
4 diversity jurisdiction over “all civil actions where the matter in controversy exceeds the sum or
5 value of \$75,000, exclusive of interests and costs,” and the action is between “(1) citizens of
6 different States; (2) citizens of a State and citizens or subjects of a foreign state; (3) citizens of
7 different States and in which citizens or subjects of a foreign state are additional parties; and (4) a
8 foreign state . . . as plaintiff and citizens of a State or of different States.” 28 U.S.C. § 1332; *see*
9 *also Geographic Expeditions, Inc. v. Estate of Lhotka*, 599 F.3d 1102, 1106 (9th Cir. 2010).

10 Defendant cannot establish diversity of citizenship jurisdiction in this case. The complaint
11 filed in the underlying unlawful detainer action in state court unequivocally states that the amount
12 in controversy is less than \$10,000. When a state court complaint affirmatively alleges that the
13 amount in controversy is less than the jurisdictional threshold, the party seeking removal must
14 prove with “legal certainty” that the jurisdictional amount is met. *Guglielmino v. McKee Foods*
15 *Corp.*, 506 F.3d 696, 699 (9th Cir. 2007); *see also Glassical Creations, Inc. v. Canter*, No. CV
16 15-04358 MMM PJWX, 2015 WL 4127912, at *4 & n. 10 (C.D. Cal. July 7, 2015). Defendant’s
17 notice of removal does not provide any basis for a finding that the amount in controversy exceeds
18 the \$75,000 threshold. The amount in controversy is determined without regard to any setoff or
19 counterclaim to which defendant may be entitled. *Mesa Indus., Inc. v. Eaglebrook Products, Inc.*,
20 980 F. Supp. 323, 326 (D. Ariz. 1997). Thus, the amount in controversy is insufficient to provide
21 this court with diversity jurisdiction.

22 Moreover, in removal cases where the purported basis of jurisdiction is diversity
23 jurisdiction, removal is not permitted where a defendant is a citizen of the state in which the
24 plaintiff originally brought the action (even if the opposing parties are citizens of different states).
25 *See* 28 U.S.C. § 1441(b). Here, defendant has only provided a post office box in Merced,
26 California, for an address and has not provided any information regarding the citizenship of
27 defendants. Defendant also does not provide any alternative basis for a finding of diverse
28 citizenship.

1 The court observes that defendant appears to have removed this case for a third time on
2 the basis of the federal moratorium on evictions, set to expire on December 31, 2020. (Doc. No.
3 1 at 1.) The court reiterates what is stated above: a defendant cannot create federal subject matter
4 jurisdiction by adding claims or defenses to a notice of removal. *Vaden*, 556 U.S. at 50; *Valles*,
5 410 F.3d at 1075. The court expresses no opinion on the applicability to defendant's case of
6 either the California state or federal moratorium on evictions.

7 Accordingly, the court REMANDS this case to the Merced County Superior Court for all
8 future proceedings. The Clerk of this Court is directed to close this case.

9 IT IS SO ORDERED.

10 Dated: **December 4, 2020**

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13 UNITED STATES DISTRICT JUDGE
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